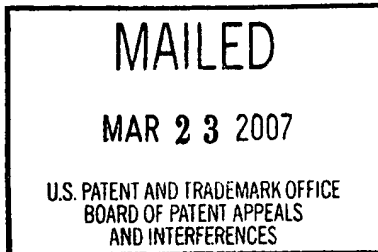


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte KENNETH J. NIEHOFF

Application No. 09/307,633

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on December 6, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On May 5, 2003, Appellant filed a Petition to Withdraw Holding of Abandonment concurrently with a Request for Continued Examination (RCE). The Examiner responded to the Appellant's communications of May 5, 2003 with an Office Action on July 2, 2003, rejecting the claims anew. We assume that because the examiner resumed prosecution of the application after the filing of the papers on May 5, 2003, the petition and the RCE were approved and/or entered. However, we find nothing in the application's Image File Wrapper (IFW) to indicate that the Holding of Abandonment was either, officially withdrawn or any official acknowledgement and entry of the RCE. The BPAI requires a proper Decision On Petition on all valid petitions and a proper acknowledgement and entry/non-entry of all RCEs filed in an appealed application before

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consideration of the application by the BPAI can proceed. Proper response to the petition and the RCE noted above is required.


Another matter that requires the Examiner's attention prior to being docketed by the BPAI is the Information Disclosure Statement (IDS) filed December 27, 2005. It is not clear from the record whether the examiner has considered the IDS as the substitute PTO Form 1449 has not been signed and dated and the references thereon have not been initialed nor has a line been drawn through them to indicate non-consideration.

Accordingly, it is

ORDERED that the application is being electronically returned to the Examiner for:

1. the examiner to properly consider the petition filed on May 5, 2003, and notification to appellant in writing of such consideration,
2. the examiner to properly acknowledge the receipt and entry/non-entry of the RCE filed May 5, 2003,
3. the examiner to properly consider the IDS filed December 27, 2005 and to mail a copy of the such consideration to appellant, and
4. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

Application No. 09/307,633

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PJN/vsh